

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 4:12cr28

MICHAEL JAY TUCKER,

Defendant.

**MOTION TO RE-ASSESS DEFENDANT FOR SANITY AT THE TIME
OF THE OFFENSE**

COMES NOW the Defendant, MICHAEL JAY TUCKER, by counsel, and moves this Honorable Court for a hearing to allow the defendant to be re-evaluated for “sanity at the time of the offenses”, pursuant to Title 18, United States Code, section 4242, and Rule 12.2, Federal Rules of Criminal Procedure.

The defendant had previously filed a notice and motion of intent in May of 2012 that the defendant may rely on the defense of insanity and the court after a hearing entered an order on 5-16-12 authorizing a psychological examination of the defendant be conducted and that a report be filed with the court, pursuant to the provision of section 4247(b) and (c). 18 U.S.C. § 4242(a). The defendant thereafter was transported to the U.S. Medical Center for Federal Prisoners in Springfield, Missouri where he was evaluated from June 14, 2012 through July 26, 2012 and pursuant to a report issued on 7-27-12 was determined to be competent and although the defendant could have been suffering from a mental disorder, Posttraumatic Stress Disorder at the time of the offenses, these disorders did not preclude him from appreciating the nature and quality and the wrongfulness of his acts and was deemed competent.

MEMORANDUM OF LAW IN SUPPORT THEREOF

When the defendant was transferred to U.S. Medical Center for Federal Prisoners in Springfield, Missouri where he was evaluated from June 14, 2012 through July 26, 2012 for competency and “sanity at the time of the offense”, the sources of information it relied upon for making its findings were, (1). Court order requesting evaluation, (2). Indictment Records, provided by defense counsel, (3). Medical summary evaluation completed by the Hampton Roads Regional Jail and provided by defense counsel, (4). Investigative records regarding the alleged offense, provided by United States Attorney’s Office, (5). Discovery materials provided by United States Attorney’s Office, (6). Mental Health records from the Western Tidewater Regional Jail from 2-24-11 to 5-11-11 and (7). Medical records from the Western Tidewater Community Services Board. The evaluators did not contact the biological mother, Pam Walker or Clyde Coley, the biological father or the adoptive parent’s Crystal and Johnny Tucker to confirm the defendant’s physical abuse and/or prior mental health history. No records were retrieved from Hershey Medical Center wherein the defendant attempted suicide at age 7 or from Merryview Medical Center where he was treated at the age of 12. The defendant self-reported to the evaluator that he had received a diagnosis of PTSD, Fetal Alcohol Syndrome, Personality Disorder, Bipolar, Schizophrenia and Reactive Attachment disorder and was treated with a multitude of psychotropic medications. Moreover, the defendant reported to the evaluator that he had suffered a long history of physical and sexual abuse which was not followed up on or verified with family members or other health professionals who have treated the defendant in the past which may or may not have affected his judgment at the time these offenses were committed. The evaluator diagnosed the defendant with Borderline Personality Disorder but also concluded that they did not have enough information to confirm the defendant’s self reported

diagnosis of Posttraumatic Stress Disorder. The “sanity at the time of offense” portion of the report relied on the same sources of information as the competency section and thus conclusions were made without a thorough investigation into the defendant’s prior mental health history which could have easily been provided by prior physician’s, psychologists, psychiatrists, facilities that treated defendant, family members or other relevant sources which could have assisted the evaluators in coming to a more informed and educated conclusion. In reviewing the presentence report prepared by Kimberly S. Weaver, she was able to contact the client’s brother, Keymar Tucker to verify the defendant’s family background and history of abuse as listed on page 14 of PSR. Moreover, the defendant was born a crack baby, mentally retarded and had fetal alcohol syndrome and was also sexually abused by his mother and father and was later sent to other family members who abused him, all relevant information that the evaluators did not explore or discover which could have impacted their conclusions. Additionally, on page 15, paragraph 44, the United States probation officer was able to confirm from defendant’s juvenile records that the evaluator’s did not request, that the defendant was in fact born 10 weeks premature, positive for cocaine and was mildly mentally retarded.

Given the defendant’s original evaluation for “sanity at the time of the offense” in 2012 was performed without all the essential and necessary information in order to reach a reasoned conclusion, counsel for the defendant would assert that the Defendant needs to be re-assessed for “sanity at the time of the alleged conduct” as outlined in his indictment especially given the severe punishment that may be imposed upon conviction and sentencing for these offenses.

WHEREFORE, defendant prays that this motion to re-assess the defendant for “sanity at the time of the offense” be granted.

Respectfully submitted,

MICHAEL JAY TUCKER

By: /s/
Of Counsel

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CERTIFICATE OF MAILING

I hereby certify that on the **15** day of April, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing (NEF) to the following:

Rebecca A. Stanton
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And I further certify that I have mailed the document by U.S. mail to the following non-filing user:

Mr. Michael Jay Tucker
c/o Western Tidewater Regional Jail
2402 Godwin Boulevard
Suffolk, Virginia 23434-8091

By: /s/ _____
Kevin M. Diamonstein, Esquire

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